IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 24654 of 2006(I)

PETITIONER:

THULASEEDHARAN PILLAI,
SUDHA MANDIRAM, THATTARKONAM P.O., KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR
SRI.K.P.SUJESHKUMAR

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
CO-OPERATION (C) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. JOINT REGISTRAR (GENERAL),
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOLLAM.

4. DECENT JUNCTION SERVICE CO-OPERATIVE
BANK, Q 133, DECENT JUNCTION P.O., KOLLAM,
REPRESENTED BY ITS SECRETARY.

5. GOPALAKRISHNA PILLAI,
OLIPPUVILA VEEDU, VETTILATHAZHAM,
DECENT JUNCTION, KOLLAM.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR (R5)
SRI.V.G.ARUN
BY SPECIAL GOVT. PLEADER SMT.A.G.ANEETHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) 24654/2006

APPENDIX

PETITIONER'S EXTS:

EXT.P1	TRUE COPY OF THE BY-LAW OF THE BANK.
EXT.P2	TRUE COPY OF THE PROCEEDINGS NO.CRP 7122/2005 OF THE SECOND RESPONDENT, DATED 23.5.2006.
EXT.P3	TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.14024/2006 DATED 30.5.2006.
EXT.P4	TRUE COPY OF THE ORDER G.O.(Rt) No.377/2006/CO-OP. PASSED BY THE SECOND RESPONDENT DATED 28.8.2006.

//TRUE COPY//

P.A. TO JUDGE.

J.M. JAMES, J.

W.P.(C) No. 24654 of 2006

Dated this the 7th December, 2006.

J U D G M E N T

The petitioner was residing at Thattarkonam. Basing on such residence, he applied and obtained the membership of 4th respondent Society. He contested for election to the Managing Committee, and latter became the President of the 4th respondent Society. The same was complained of by one Sri.Gopalakrishna Pillai, 5th respondent herein, stating that Thattarkonam, area of residence, is outside the working limit of the 4th respondent, Society. The materials available show that as per an earlier order, Thattarkonam was taken out of the working area of the 4th respondent Society. Hence, the writ petitioner is not entitled to become a member of the Society, basing on his place of residence.

2. Accordingly, proceedings were initiated. Ext.P2 order of the 3rd respondent, Joint Registrar, after hearing the writ petitioner, was passed under Section 28 of the Kerala Co-operative Societies Act, 1969, in short 'the Act', and Rule 44 (1) (a) & (j) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules', together with clause 5(4) of the bye-laws of the 4th respondent,

Society. The petitioner was disqualified to be a member of the Managing Committee of the 4th respondent, Society, under Rule 44(3) of the Rules. The same was challenged before the Government through an appeal by the petitioner. As per Ext.P4 order dated 28.8.2006, the Government held that the petitioner is not eligible to be a member of the 4th respondent, Society, and, therefore, upheld the order of the 3rd respondent, Joint Registrar, dated 23.5.2006. The same is under challenge through this writ petition.

3. I heard the arguments advanced by the learned counsel appearing for the writ petitioner, counsel for the 5th respondent, and the learned Senior Government Pleader.

4. The residence of the petitioner at Thattarkonam is not disputed. It is also in evidence that the said area is outside the working limit of the 4th respondent, Society. Therefore, the petitioner is ineligible to be a member of the 4th respondent, Society.

5. Rule 16(4) of the Rules lays down that where a member of a Society becomes ineligible to continue as such, the Registrar of the Societies may, of his own motion or on a

representation made to him by any member of the society, by an order in writing, declare that he has ceased to be a member of the Society from the date of order of the Registrar.

6. The learned counsel appearing for the petitioner, therefore, contend that Ext.P2 order of the 3rd respondent, Joint Registrar, only disqualifies the petitioner from continuing as a member of the Managing Committee, and not as the member of the 3rd respondent, Society.

7. I have gone through Ext.P2. It only declares that the petitioner has been disqualified in continuing as a member of the Managing Committee of the 4th respondent, Society, and not as a member of the Society, as such. There is a finding in Ext.P4 that the writ petitioner is not eligible to be a member of the 4th respondent, Society. But there is nothing to show that the Registrar has declared so, as the appeal was from the order of the Registrar and not an independent one passed by the Government. Therefore, in effect, the Government has only confirmed the order of the Registrar. Rule

16(4) of the Rules has not been applied. Hence, it cannot be said that there was a declaration, making the writ petitioner ineligible from continuing as the member of the Society.

8. However, considering the facts of this case, I uphold the declaration of the Registrar under Ext.P2 and that of the Government under Ext.P4. The writ petitioner had been declared disqualified in continuing to be a member of the managing committee of the 4th respondent, Society. Therefore, the contention to the contrary, by the counsel for the petitioner, is rejected.

9. In the above facts situation, I dispose of the writ petition, directing the Registrar to hear the writ petitioner and pass appropriate orders, relying on Rule 16(4) of the Rules, basing on the materials that are available on record. This shall be done within one month from the date of receipt of a copy of this judgment.

J.M. JAMES,
JUDGE

nj.